

INITIAL STATEMENT OF REASONS

HEARING DATE(S):

April 18, 2018, at 10:00 a.m.
Room 150, 801 Capitol Mall, Sacramento,
California

**SUBJECT MATTER OF THE PROPOSED
REGULATIONS:**

Petitions to Participate in Examinations

SECTIONS AFFECTED:

Title 2, Chapter 1, California Code of
Regulations, Sections 211 et seq.

PURPOSE, RATIONALE, NECESSITY, AND BENEFITS OF REGULATORY ACTION:

Background:

The jurisdiction and authority of the State Personnel Board (Board) to enforce civil service statutes and promulgate regulations is rooted in the California Constitution, article VII, section 3. The Board thus promulgates rules to govern classifications, examinations, selection, probationary periods, career executive assignments, and other matters related to its authority under Article VII of the California Constitution. (Gov. Code, §§ 18502, subd. (b) & 19889.) The Board's rulemaking authority is also found in certain statutory provisions related to civil service and the merit principle.

Discussion of Each Adoption, Amendment, and Repeal, and Anticipated Benefits:

The following paragraphs set forth the problems with the current regulations; a summary of the proposed changes; the purpose and rationale of each adoption, amendment, or repeal; and the anticipated benefits of each adoption, amendment, or repeal.

I. Amend Section 211. Petitions to Participate in Examinations.

The proposed changes to the Board's regulations concern situations in which an employee has been dismissed from state civil service by adverse action or as a result of disciplinary proceedings and thereafter seeks employment with the state by taking civil service examinations. Currently, California Code of Regulations, title 2, section 211 (Rule 211) sets forth the standards for eligibility and appeal rights. Absent following Rule 211, a former employee dismissed by adverse action or as a result of disciplinary proceedings is prohibited from taking any civil service examination or being certified from an eligible list to any civil service position. The former employee must seek the prior approval of the

California Department of Human Resources (CalHR) and make the request for approval in writing. The request must contain certain specified information, such as the facts and reasons supporting the former employee's request to take civil service examinations. In reviewing the request, CalHR is required to consider a number of factors, for instance, the type of examination that the former employee seeks to take, the classification of the examination, and the circumstances and causes surrounding the dismissal. CalHR must make a determination no later than 30 days after receipt of the request. The former employee may appeal the decision to the Board within 30 days after receipt of the decision.

The proposed changes to Rule 211 clarify that the request is a written petition to participate in civil service examinations and require that the petition be served on the agency that initially served the adverse action of dismissal. The amendments add that where an agency no longer exists or has undergone significant organizational and administrative changes, CalHR shall determine whether a different or new agency should be notified and, if so, CalHR shall serve the agency with a copy of the petition. As with current Rule 211, the amendments require that certain information must be contained in the petition, e.g., effective date of the dismissal, the reason(s) for the dismissal, and an explanation setting forth reasons why the petition should be granted.

The proposed changes also clarify and make more precise the factors CalHR must consider when making a decision to grant or deny the request. For instance, rather than "[c]onfirmation/assurance of corrected and/or sustained improved behavior, the changes state, "Evidence of corrected and sustained improved behavior." The timeframes for decision making and any appeal remain the same.

The proposed changes are intended to update, clarify, and make more concise and efficient the process for petitions to participate in civil service examinations. Other proposed changes are technical for purposes of style and consistency.

II. Adopt Section 211.2. Petitions to Participate in Examinations After a Board Decision.

The current regulatory scheme of the Board does not include any rules related to petitions to participate in examinations after a Board decision on the adverse action dismissing the former employee. This rulemaking action proposes to resolve this issue by adopting Rule 211.2.¹ In general, this proposed Rule mirrors the process, considerations, and timeframes of proposed Rule 211, except the petition to participate in civil service examinations is submitted to the Executive Officer for review and decision. Like the agency that filed the adverse action dismissing the employee, CalHR may submit to the Executive Officer a response to the petition. Also, similar to proposed Rule 211, the former employee may appeal the Executive Officer's decision to the Board.

¹ Rule 211.1 concerns limitations on administrative hearing or medical interpreter certification for non-citizens and is not part of this proposed rulemaking action.

The proposed changes are intended to clarify the process for petitions to participate in civil service examinations after a Board decision on the adverse action dismissing the former employee and promote consistency in procedures.

CONSIDERATION OF ALTERNATIVES:

The Board has initially determined that no reasonable alternatives have been identified that would be more effective in carrying out the purposes for which the instant action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.